

LEWIS BRISBOIS BISGAARD & SMITH LLP

ATTORNEYS AT LAW

199 WATER STREET, SUITE 2500, NEW YORK, NY 10038

PHONE: 212.232.1300 | FAX: 212.232.1399 | WEBSITE: www.lbbslaw.com

MARK K. ANESH
DIRECT DIAL: 212.232.1411
E-MAIL: anesh@lbbslaw.com

June 20, 2008

FILE NO.
50017-00277

Honorable Sidney H. Stein
United States District Judge
United States Courthouse
500 Pearl Street
New York, New York 10007

Re: *Westport Insurance Corporation v. Patricia Hennessey, Esq., and Cohen, Hennessey, Bienstock & Rabin, P.C. f/k/a Cohen, Hennessey, Bienstock, P.C.,*
Case No.: 07 Civ. 6726

Dear Judge Stein:

We represent the plaintiff in the above referenced matter. Pursuant to Your Honor's instruction, we submit this letter in further support of plaintiff's motion for summary judgment.

The concept of a peripheral duty of a lawyer to its client concerns those legal needs that should be reasonably apparent to an attorney, even if neither the client nor lawyer intended the matter to be within the scope of the legal representation. *Mallen & Smith, Legal Malpractice* § 8.2, at 920-921 [Ed 2005]. A common example of instances in which a lawyer has such a duty is matters involving an attorney's retention to commence a workers' compensation proceeding on its client's behalf. In these instances, New York courts have held that "The extent of the law firm's duty to represent their client's interest is not limited by the scope of their retainer agreement. The possibility that an action for personal injury may lie against a contractor or the owner of the premises is a reasonably apparent legal matter of which an attorney might be expected to apprise a client."

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Greenwich v. Markoff, 234 A.D. 2d 112 (1st Dep't 1996) (citing *Davis v. Klein*, 224 A.D. 2d 196 (1st Dep't 1996)); *see also Campbell v. Fine*, 642 N.Y.S. 2d 819 (N.Y. Sup. Ct., New York County 1996).

Should the Court require any further information regarding this matter, please contact the undersigned.

Respectfully Submitted,



Mark K. Anesh for

LEWIS BRISBOIS BISGAARD & SMITH LLP

MKA:JRW

cc:
Fried & Epstein LLP
1350 Broadway, Suite 1400
New York, New York 10018
Attention: John W. Fried, Esq.